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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

DAMIEN P.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F078252

(Super. Ct. No. 17CEJ300265-1)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Brian M. Arax, Judge.

Damien P., in pro. per., for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Real Party in Interest.

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* Before Smith, Acting P.J., Meehan, J. and DeSantos, J.

Damien P. (father), in propria persona, seeks an extraordinary writ from the juvenile court's orders issued at a contested 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f)(1))¹ terminating his reunification services and setting a section 366.26 hearing as to his now nine-year-old daughter, D.F. He contends the court gave too much weight to a recent conviction for domestic violence in making its decision and claims financial hardship prevented him from participating in court-ordered services. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In August 2017, then eight-year-old D.F. went to the school office, complaining of leg pain. She asked the office manager for a Band-Aid. When D.F. pulled up her pant leg, the manager noticed that she had long thin welts on her thighs. D.F. said father whipped her with an extension cord and a belt because she was having trouble with her homework. Her mother was deceased, and she was afraid to go home. The Fresno County Department of Social Services (department) took her into protective custody on August 31, 2017, and placed her in a foster home, pending placement with a relative.

Father admitted hitting D.F. out of frustration and acknowledged he may have hit her too hard. According to the Fresno County Sheriff's Office, he had several convictions in Fresno County, including one for battery in 2013.

The juvenile court adjudged D.F. a dependent child at the jurisdictional hearing on October 3, 2017, and, in November, ordered father to participate in parenting, substance abuse, mental health and domestic violence services. The court also ordered him to spot test for drugs at the department's discretion. The department placed D.F. with M.V., a family friend.

¹ Statutory references are to the Welfare and Institutions Code.

By the six-month review hearing in April 2018, father had made significant progress in his services plan and was enjoying unsupervised visits with D.F. He was affectionate with her and more patient and attentive. D.F. was happy and comfortable in his care. The department believed his prognosis for reunifying was good and recommended the juvenile court continue reunification efforts.

The juvenile court continued reunification services at the six-month review hearing in April 2018 and set the 12-month review hearing for September 2018. The court also granted the department discretion to begin liberal visits. The department arranged the first such visit on June 3. Father agreed as a condition of having liberal visits that he would not take D.F. to any unauthorized homes or subject her to any unauthorized people. He was only authorized to have liberal visits at the home of his girlfriend with whom he was living. However, three days later, father was arrested following a domestic violence incident with his girlfriend. Father's girlfriend told the arresting officer father arrived at her apartment drunk, climbed on top of her while she was on her bed, placed both knees on her chest to prevent her from getting up and struck her multiple times with his hands on both sides of her face. When she was able to get up, he pushed her against a wall. Father did not inform the department of his arrest until June 20. In the meantime, he continued to have liberal visits with D.F. at an unauthorized location.

On June 27, 2018, the department filed a modification petition (§ 388, subd. (a)(1)), asking the juvenile court to reinstate supervised visits, in light of father's domestic violence incident and breach of the visitation condition. The court granted the petition at a hearing in July.

In its report for the 12-month review hearing, the department recommended the juvenile court terminate father's reunification services and reduce visitation to once a month. The department made this recommendation because father did not believe he had

a problem with alcohol and continued to test positive for it at high levels. He also had yet to demonstrate he could control his anger and utilize the skills he learned in his domestic violence and substance abuse classes. Meanwhile, D.F. loved M.V. and felt safe and happy in her care. She was progressing in school and was almost at grade level. D.F. said she loved her father and would like to go home but understood if she could not and was willing to stay with M.V. M.V. was willing to adopt her.

In September 2018, father pled no contest to a misdemeanor count of corporal injury on a spouse/cohabitant stemming from the June incident with his girlfriend. He was referred to probation and sentencing was set for October 16, 2018.

The 12-month review hearing, originally scheduled for September, was conducted as a contested hearing on October 11, 2018. Social worker Leslie Spraeetz testified father completed a parenting class and was participating in domestic violence classes and substance abuse classes, which he had to restart after testing positive for alcohol five times in August. He subsequently tested negative. He was also participating in mental health services once a week and visiting D.F. every Saturday for one to two hours. Though father participated in services, his behavior had not changed, and he did not take responsibility for the domestic violence incident. He acknowledged that there was an incident with his girlfriend but did not believe it was domestic violence.

Father testified he took responsibility for the domestic violence charge as evidenced by his no contest plea. He never stopped participating in his services and believed he was benefitting from them. His attorney argued the juvenile court should continue reunification services.

The juvenile court terminated reunification services, finding the department provided father reasonable reunification services and there was not a substantial probability D.F. could be returned to his custody with continued services. The court also

set a section 366.26 hearing for January 31, 2019, and ordered a minimum of two supervised visits per month.

DISCUSSION

Father contends the juvenile court presumed from his no contest plea that he was guilty of the domestic violence charges stemming from the June incident with his girlfriend. This was error, he argues, because his criminal case was not concluded, and requires reversal of the court's order terminating his reunification services. He also claims he was not able to attend classes because he could not afford them. We find no error.

At the 12-month review hearing, the juvenile court must order the return of the child to the physical custody of his or her parent unless it finds the return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (f)(1).) If the court does not return the child, it may continue the case for up to six months if there is a substantial probability the child will be returned to parental custody within 18 months from the time the child was initially removed. (§ 366.21, subd. (g)(1).) To find a substantial probability of return, the juvenile court must find the parent regularly visited the child, made significant progress in resolving the problem prompting the child's removal, and demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection, and well-being. (§ 366.21, subd. (g)(1)(A)-(C).) Otherwise, the court must terminate reunification services and set a section 366.26 hearing to implement a permanent plan for the child. (§ 366.21, subd. (g)(4).) Before the court may terminate services and set a section 366.26 hearing, however, there must be clear and convincing evidence the department provided reasonable services to the parent. (§§ 361.5, subd. (a), 366.21, subd. (g)(4).)

Here, the juvenile court found father was provided reasonable reunification services. Father asserts for the first time he was unable to access them because of a financial hardship. However, he never informed the department or the court that finances prevented him from participating in services. Further, the record contradicts his claim. He testified not only that he was participating in services but was benefitting from them. The only hindrance he mentioned was his demanding work schedule.

Further, father's guilty plea was one factor, not the determining factor, in the juvenile court's decision to terminate his reunification services. The court also considered father's prior and recent history of alcohol use and violence, specifically mentioning his 2013 battery conviction, his physical abuse of D.F., his continued consumption of alcohol despite nearly a year of treatment and the seriousness of his assault on his girlfriend. The court stated it could not find a substantial probability D.F. could be returned to his custody in the four months remaining before the 18-month review hearing.

We conclude substantial evidence supports the juvenile court's decision.

DISPOSITION

The petition for extraordinary writ is denied. This court's opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.